

**REMARKS / ARGUMENTS**

This Amendment is submitted in full response to the outstanding Office Action dated July 2, 2004. Claims 1-13 stand rejected under the judicially created doctrine of obviousness type double patenting as being unpatentable over claims 1-16 of U.S. Patent No. 6,585,691 issued previously to the Applicant herein. Also, claims 1-4 stand rejected under 35 U.S.C. §102 as being anticipated by U.S. Patent No. 4,667,837 to Vitello et al.

**A. Rejection of Claims 1-13 Overcome with Terminal Disclaimer**

Applicant submits herewith a Terminal Disclaimer which disclaims the terminal part of any patent allowed on this application beyond the expiration date of U.S. Patent No. 6,585,691 to the Applicant herein. In compliance with 37 CFR 1.321 (c) the filing of a Terminal Disclaimer, as attached hereto, is believed to overcome the rejection of these claims based on obviousness-type double patenting, plus any such similar concerns that may arise relative to the newly added claims 14-20 introduced herewith.

**B. Arguments re: Rejection of Claims 1-4 under Section 102**

In order to facilitate the prosecution of this application, Applicant has canceled dependent claim 5, without prejudice, and included the language thereof in currently

amended, independent claim 1. In that only claims 1 through 4 of this application have been rejected under 35 U.S.C 102, it is apparent that the Examiner has recognized allowable subject matter in claims 5-13. Accordingly, it is believed that independent claim 1, as amended, and the remaining claims dependent thereon all contain allowable subject matter.

**C. Submission of new Claims 14-20**

In addition to the above, this amendment also includes the filing of new, independent claim 14 and dependent claims 15-20. These claims are believed to include claim language similar to that of original claim 5 (now presented as amended claim 1) and which clearly distinguishes Applicant's invention from the cited Vitello et al. reference (U.S. Patent No. 4,667,837), as well as any other prior art references of which Applicant is aware.

More specifically, independent claim 14 defines Applicant's invention as including a tamper evident cap assembly for a syringe having a nozzle with a discharge port, wherein the assembly comprises an end cap member disposed in at least partially covering relation to the nozzle of the syringe; an indicator member detachably secured to the end cap member, exteriorly of the nozzle; a syringe cap movably disposed within the end cap member into a fluid restricting position and the end

cap member being interconnected to the syringe cap and movable therewith. As such, the end cap member is structured to dispose the syringe cap into the fluid restricting position when the end cap member is moved in a predetermined direction. Moreover, the end cap member is detachable from the indicator member and removable from both the syringe cap and the nozzle upon a predetermined force being applied to the end cap member.

This claim language is believed to clearly distinguish Applicant's invention from U.S. Patent No. 4,667,837 to Vitello et al. by defining the end cap member being interconnected to the syringe cap such that movement of the end cap member in a predetermined direction serves to dispose the syringe cap into the fluid restricting position. Newly submitted claims 15, 16 and 17 more specifically distinguish Applicant's invention from Vitello et al. by reciting an end cap member which comprises a floor piece interconnected to the syringe cap and movable both with the syringe cap and relative thereto dependant upon the predetermined direction of movement of the end cap relative to the syringe cap. Further, as set forth in new dependent claim 16, the floor piece and correspondingly positioned portions of the syringe cap are engaged and cooperatively structured for both axial and rotational movement of the syringe cap into the

fluid restricting position upon a movement of the end cap member in a predetermined direction. Dependent claim 17 more specifically defines the predetermined direction of movement of the end cap member as a rotation thereof in only one of two opposite directions. As described in detail in the specification, rotation of the end cap member relative to the syringe cap in the opposite direction will result in relative movement between the end cap member and syringe cap, and will not cause an axial and/or rotational movement of the syringe cap into or out of the fluid restricting position.

In contrast, U.S. Patent No. 4,667,837 to Vitello et al., as applied by the Examiner on page three of the outstanding Office Action, comprises an end cap 11, an indicator member 12, a syringe cap 21 and a connecting assembly 13 and 14. However, it is clear that Vitello et al. is absent the end cap 11 being interconnected to the syringe cap 21 and movable therewith such that the end cap is structured to dispose the syringe cap into a fluid restricting position. Further, Vitello et al. is absent any specific structure which could be interpreted as a floor piece being interconnected to the syringe cap 21 and cooperatively structured to be movable therewith and/or relative thereto, dependent on the predetermined direction of rotation of

the end cap 11. Accordingly, the absence of a floor piece in Vitello et al., prevents both axial and rotational movement of the syringe cap 21 into the fluid restricting position upon a predetermined movement or rotation being applied to the end cap 11, as recited in the claims now appearing in this application.

Newly submitted dependent claims 18-20 recite structural features of Applicant's invention originally appearing in claims 2-4 which now depend from amended claim 1. Accordingly, in light of the submission of new claims 14-17 and the Remarks set forth above, Applicant respectfully requests the Examiner to reconsider his position regarding the Vitello et al. reference (U.S. Patent No. 4,667,837) as applied under 35 U.S.C. 102.

**D. Conclusion.**

Based on the above, Applicant believes that the rejection of claims 1-13 recited in the Office Action of July 2, 2004 have been overcome. Therefore, Applicant respectfully contends that this application is now in condition for allowance, and such favorable consideration and action by the Examiner is respectfully solicited.

In addition, a Motion for an appropriate Extension of Time is enclosed herewith along with the corresponding PTO fee. In the event that any additional fee may be required by the filing

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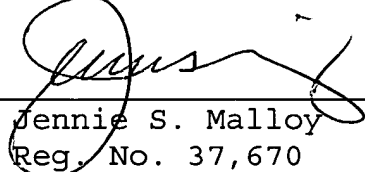
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of this paper, the Commissioner is hereby authorized to charge  
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Respectfully Submitted,

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